

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TALECRIS BIOTHERAPEUTICS, INC.,

Plaintiff,

V.

**BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE CORPORATION,**

Defendants.

BAXTER HEALTHCARE CORPORATION

Counterclaimant,

V.

**TALECRIS BIOTHERAPEUTICS, INC., and
BAYER HEALTHCARE LLC.,**

Counterdefendants.

C.A. No. 05-349-GMS

Demand for Jury Trial

**STIPULATION FOR FILING AN AMENDED AND
SUPPLEMENTAL COMPLAINT**

WHEREAS, certain events set forth below have taken place since the date the Complaint was filed in this action, thereby causing Plaintiff and Counterdefendant Talecris Biotherapeutics, Inc. (“Talecris”) and Counterdefendant Bayer Healthcare LLC (“Bayer”) to seek leave to amend and supplement the Complaint under Rules 15(a) and 15(d) of the Federal Rules of Civil Procedure; and

WHEREAS, Defendants Baxter International Inc. and Baxter Healthcare Corporation (collectively, “Baxter”) and Talecris and Bayer (collectively, the “Parties”), through their respective counsel, have agreed to stipulate to the filing of an Amended and Supplemental Complaint;

WHEREAS, Talecris filed its original complaint on June 1, 2005. The Complaint seeks, *inter alia*, declaratory judgment that Baxter International Inc. and Baxter Healthcare Corporation (collectively, “Baxter”) infringe, or will infringe, one or more claims of U.S. Patent No. 6,686,191 (“the ‘191 patent”) under 35 U.S.C. §§ 271(a), (b), or (g);

WHEREAS, on or about September 26, 2005, Baxter publicly announced its launch of sales of its GAMMAGARD® LIQUID Immune Globulin Intravenous (Human), 10% Solution, product and has commenced sales of said product in the United States;

WHEREAS, on August 31, 2005, Baxter filed its Answer and Counterclaim for Declaratory Judgment, naming Bayer Healthcare LLC (“Bayer”) as a Counterdefendant, and alleging as part of its Fifth Affirmative Defense that Talecris lacks standing because Bayer, as the owner of the ‘191 patent, did not join in the present action. Bayer presently is represented by counsel;

WHEREAS, the Complaint alleges that Talecris is the exclusive licensee of the ‘191 patent with right to enforce the patent (Complaint, ¶12), and Bayer is the assignee of the ‘191 patent (Complaint, ¶9); and

WHEREAS, during the March 28, 2006 Scheduling Conference, counsel for Baxter did not oppose Talecris amending the Complaint to add Bayer as a Plaintiff in this

case and adding a prayer for relief in the form of damages, subject to Baxter's right to respond to the same on the merits (*see* March 28, 2006 Hearing Transcript at 21:10–23);

WHEREFORE, it is hereby stipulated by and between the Parties, pursuant to Fed. R. Civ. P. 15(a) and 15(d) and subject to the approval of the Court, that Talecris and Bayer may file their Amended and Supplemental Complaint in the form attached to this motion as Exhibit 1, and such Complaint shall be deemed filed upon entry of this Order, and Baxter shall have twenty (20) days to move, answer or otherwise respond to the same.

Pursuant to Del. L. Rule 15.1, a duplicate copy of the Amended and Supplemental Complaint is attached as Exhibit 2, and a black-lined version of the Amended and Supplemental Complaint showing the changes from the original Complaint is attached as Exhibit 3.

Respectfully submitted,

/s/ Jeffrey B. Bove

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DATED: May 5, 2006

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SO ORDERED this ____ day of _____, 2006.

Gregory M. Sleet, United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, JEFFREY B. BOVE, do hereby certify that on May 5, 2006, I electronically filed **STIPULATION FOR FILING AN AMENDED AND SUPPLEMENTAL COMPLAINT** and **AMENDED AND SUPPLEMENTAL COMPLAINT** with the Clerk of Court using CM/ECF which will send notification of such filings to the below listed. I further hereby certify that on May 5, 2006, I caused a true copy of the foregoing document to be served upon the below listed in the manner indicated on May 5, 2006.

Via Hand Delivery and E-Mail

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